EXHIBIT J

PART 1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF PENNSYLVANIA

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TINA LINDQUIST, :

PLAINTIFF, :

-VS- : CASE NO. 04-249E

HEIM, LP, :

DEFENDANT. :

- - -

Deposition of DENNIS R. CLOUTIER, a witness herein, taken by the plaintiff as upon direct examination pursuant to the Federal Rules of Civil Procedure and pursuant to agreement and stipulations hereinafter set forth at the offices of Dinsmore & Shohl, 1600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio at 8:22 a.m. on Tuesday, April 11, 2006, before Lisa Conley, RMR, CRR, CCP, a notary public within and for the State of Ohio, and by audio/visual means before Marlene Dori, CLVS.

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APPEARANCES:

On behalf of the Plaintiff:

Dallas W. Hartman, Esq.

of

Dallas W. Hartman, PC

2815 Wilmington Road

New Castle, Pennsylvania 16105

On behalf of the Defendant:

Paul R. Robinson, Esq.

of

Meyer, Darragh, Buckler, Bebenek & Eck, PLLC

US Steel Tower, Suite 4850

600 Grant Street

Pittsburgh, Pennsylvania 15219-6194

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S T I P U L A T I O N S

It is stipulated by and between counsel for the respective parties that the deposition of DENNIS R. CLOUTIER, a witness herein, may be taken as upon direct examination pursuant to the Federal Rules of Civil Procedure, and pursuant to agreement; that the deposition may be taken in stenotypy by the notary public-court reporter and

transcribed by her out of the presence of the witness; that the transcribed deposition is to be submitted to the witness for his examination and signature, and that signature may be affixed out of the presence of the notary public-court reporter.

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I N D E X

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E X H I B I T S

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THE VIDEOGRAPHER: Today is April the 11th, 2006. The time now is 8:22 a.m. This is in the US District Court, Western District of Pennsylvania, Case No. 04-249E, in the matter of Tina Lindquist, Plaintiff, versus Heim, LP, Defendant. At this time I'll have counsel introduce themselves, please.

MR. HARTMAN: My name is Dallas Hartman. I represent the Plaintiff, Tina Lindquist.

MR. ROBINSON: Good morning. Paul Robinson representing the Defendant, Heim, LP.

THE VIDEOGRAPHER: At this time the court reporter will swear in the witness, please.

(Witness sworn.)

DENNIS R. CLOUTIER

of lawful age, a witness herein, being first duly sworn as hereinafter certified, was examined and deposed as follows:

DIRECT EXAMINATION

BY MR. HARTMAN:

Q. For the record, would you please state your full name.

A. Dennis Roger Cloutier.

Q. Mr. Cloutier, my name is Dallas Hartman. I represent Tina Lindquist. We're taking your videotaped deposition in the discovery matter of this case.

It's my understanding that you authored a report of March 15th, 2006?

A. Yes.

Q. Are you represented by counsel today?

A. I am accompanied by the counsel for Heim.

Q. Okay. Would that be Mr. Robinson?

A. Yes.

Q. And am I correct that Mr. Robinson retained your services in this matter?

A. Yes.

Q. Will you give us your current address, Mr. Cloutier?

A. 6624 Parkland Avenue, Cincinnati, Ohio.

Q. And how long have you been at that address?

A. Since 1982.

Q. What kind of business are you

currently engaged in?

A. I am a safety consultant.

Q. Would you describe for us what a safety -- what your duties are as a safety consultant?

A. I provide safety consulting services to business and industry relative to industrial safety.

Q. What type of businesses have you been employed by as it relates to providing safety consulting services?

A. Machine manufacturers, food ingredients manufacturers, the Occupational Safety and Health Administration, and various manufacturing firms that use machinery to make products.

Q. Have you had the opportunity to review the testimony of Professor Barnett in this matter?

A. No, I have not.

Q. Have you had the opportunity to meet with Mr. Robinson this morning to prepare for this deposition?

A. Yes, I have.

Q. And, approximately, what time did you meet with Mr. Robinson?

A. I picked him up at his hotel just before 7:00, and we had breakfast together.

Q. Okay. What issues did you discuss?

A. The elements of the case, some of the testimony of Mr. Barnett, some of the evidentiary evidence that has been provided through discovery so far.

Q. What elements, what is your understanding of the elements of this case are?

A. I understand that the major complaint that is being alleged against Heim is the type of foot switch that was on the machine at the time of the occurrence and how the machine was being used.

Q. What type of machine -- Strike that.

What type of foot control was on the Heim machine at the time of this occurrence?

A. It's my understanding it was a Linemaster foot switch.

Q. Do you know what model number?

A. I believe it was a 511, Model 511.

Q. Would you describe what your

understanding is, a Linemaster Model 511 switch is?

A. It's an anti-trip type foot switch, which has a toe release type of mechanism.

Q. What's the purpose of the toe release on the Model 511?

A. The toe release latches the actuating pedal in the up position and requires an operator to insert their foot completely into the foot switch to release the toe latch before operating -- or before depressing the operating lever.

Q. What's the purpose of having a toe latch on that foot switch, if you know?

MR. ROBINSON: Objection to the form.

A. The toe latch is a device that is intended to reduce or minimize the possibility or the probability of inadvertent actuation of the foot switch.

Q. You indicated -- First you said "possibility" and then you said "probability," what was that change about; would you explain to me what inadvertent activation of the foot switch

means?

MR. ROBINSON: Objection to the form.

A. The difference between possibility and probability is, possibility is just speculation, anything is possible; but in probabilities you can actually numerically specify what the likelihood of something happening is as opposed to it not happening.

Q. Okay. So the anti-trip toe latch probably reduces the likelihood of accidental activation; am I -- I don't -- You made a change.

A. It reduces the probability. Probability is measured from 0 to 1, 1 is a definite happening, 0 is a definite not happening, and somewhere in between there is the probability rating.

Q. Okay. So the anti-trip toe latch reduces the probability of accidental activation of the foot switch --

A. Yes.

Q. -- foot control?

A. Yes.

Q. Do you know what -- by what

reduction it provides?

A. No.

Q. You just know that it does?

A. That's the way it's been presented to industry.

Q. Do you agree with that representation?

A. Yes.

Q. Okay. Would the anti-trip toe latch reduce the probability of accidental activation of the foot control if the operator is riding the pedal?

A. No.

Q. Never?

A. Say that again, ask that question again.

Q. You said it would not reduce the probability of accidental activation of the foot control if the operator is riding the pedal.

A. That's correct, that's what I said.

Q. Are you saying it would never operate to inhibit accidental activation of the foot control in that situation?

A. No.

Q. Would you explain how you came to that conclusion?

A. My experience working in the industry.

Q. Well, tell me what experience you have in the industry.

A. I began working in the industry, metal fabricating industry, which is associated with press brake operation, in 1973. I spent nine years as a field service representative working on machines, repairing them, visiting various users of press brakes during that period of time. After that, I entered into the safety area relative to the operation and use of press brakes, and I worked that area from 1982 to 2001, and I continue to operate -- work that area.

Q. What observations did you make during that 20 years or so of experience in the metal fabricating industry that leads you to believe that the anti-trip toe latch would not inhibit accidental activation of the foot control when the operator is riding the pedal?

A. Because when the operator's foot is in there, the toe latch is released --

Q. Would that be --

A. -- if they're riding the foot switch.

Q. Okay. Maybe we're talking about two different things. So on the anti-trip toe latch foot control, your definition of riding the pedal would have the operator releasing the latch and keeping it released as they're riding the pedal; is that correct?

A. That is the definition of riding a foot switch.

Q. I'm sorry. Tell me the definition of riding a foot switch.

A. That is my definition of riding a foot switch, keeping your foot in the foot switch to actually keep the foot switch actuated all the time.

Q. So it would include having the toe latch depressed --

A. Yes.

Q. -- on the Model 511?

A. Yes.

THE VIDEOGRAPHER: Does everybody have their phones off?

MR. ROBINSON: I'm sorry.

BY MR. HARTMAN:

Q. So just so we have the record straight, with regard to the Model 511 Linemaster foot control with the anti-trip toe latch, your definition of riding the pedal on that control would be the operator has the foot fully inserted with the toe latch depressed so that they can push the pedal up and down at anytime?

A. Yes.

Q. The toe latch would be rendered neutral in that situation?

A. Yes.

Q. It would not be activated in that situation?

MR. ROBINSON: I'll object to the form of that question.

A. No.

Q. It would not?

A. That's not what I said, it's not.

Q. Well, the toe latch would be depressed so that it doesn't latch the foot pedal in that situation?

A. Correct.

Q. I see in your resume you have approximately 19 years with Cincinnati, Incorporated, Cincinnati, Ohio, as your employer; am I correct?

A. No.

Q. I have from 1973 to 1979, Cincinnati, Incorporated, Cincinnati, Ohio, Product Safety Coordinator.

A. No.

Q. That's not accurate?

A. No.

Q. Who were you employed with during that period of time?

A. Cincinnati, Incorporated.

Q. What did I say? I thought I said Cincinnati, Incorporated.

A. As a Product Safety Coordinator, and I was not a Product Safety Coordinator between 1973 and 1979.

Q. My first question, though, sir, was -- I'm sorry. My first question was that you were employed for approximately 19 years by Cincinnati, Incorporated?

A. And I said no.

Q. Can you tell me, when it says 1973 to 9/2001, Cincinnati, Incorporated, Cincinnati, Ohio means?

A. 1973 to 2001?

Q. Yes.

A. That's 29 years; isn't it?

Q. Math was never a good thing, I apologize.

A. Okay.

Q. Okay. So for 29 years you were employed by Cincinnati, Incorporated?

A. Yes.

Q. Okay. I wasn't trying to cut your time down. I just didn't add the numbers up right.

A. I'm only answering your questions.

Q. That's okay.

Who is Cincinnati, Incorporated?

A. They are a machine tool manufacturer.

Q. What kind of machine tools do they manufacture?

A. They make mechanical and hydraulic power press brakes, mechanical and hydraulic power

squaring shears, laser cutting systems, powdered metal compacting presses, hydraulic power presses, and I believe that's their entire product line today.

Q. Is a hydraulic power press, would that be also called a punch press?

A. Yes, it could be.

MR. ROBINSON: I'll object to the form of the question. My apologies.

Q. Is there a difference between press brakes and punch presses, to your understanding?

A. Yes.

Q. Would you tell me what the differences are?

A. The types of work that they do. The power press is a machine that is -- has a defined work area, a structure where the work is performed within that structure. A press brake is a long -- performs long, narrow bending, and it has an area which is called point of operation where the material is actually worked, but a large portion of the material is outside of that area during the forming operation. Whereas, a punch press, all of the piece part itself is contained within the area

of the machine.

Q. Are there any other differences that you can tell me between punch presses and press brakes?

A. There are numerous differences relative to control systems and the safety requirements associated with each machine and the type of operator interfaces that are associated with each machine, and the size, just the physical size of each machine.

Q. What are the differences in the size of each type of machine?

A. Press brakes run from as small as 20 to 30-ton capacity, maybe 4 feet long in length, and 5 or 6 feet in height to up to 2,000 or 2500-ton capacity, up to 60 feet long, and maybe 2 or 3 stories high.

Power presses, on the other hand, are from very light tonnages, again 15, 20, even maybe less than 15 tons, up to 40 or 50,000-ton capacity. They are the sizes of houses in some cases or as small as a bench-type of press that could fit on a typical work bench.

Q. Are there differences generally in

the speed by which power presses -- or punch presses and press brakes operate?

MR. ROBINSON: I object to the form of the question.

A. There are differences in speed within each type of machine as well as compared between each other.

Q. Would you tell me, when compared to each other, what the differences are?

A. Really, there isn't any. Some of the larger press brakes and the larger punch presses or power presses will run at strokes of 15 to 20 strokes per minute, and some of the smaller ones will run at strokes of 30 to 60 strokes per minute, and then it goes across lines.

Q. Okay. Would you expect to find press brakes that have operating cycles greater than 40 to 60 strokes a minute?

A. No, I wouldn't expect that.

Q. Would you expect to see punch presses that have stroke capacities at greater than 40 to 60 strokes per minute?

A. Maybe some of the smaller ones. There are -- There is a specific family of power

presses that are called high-speed presses that run much faster, but in the general forming industry, they pretty much match up evenly across all the lines.

Q. In your report I notice that you make a clear distinction between press brakes and power presses; am I correct?

A. Yes.

Q. Okay. Would you agree that the standards that apply to punch presses are not the same standards that would apply to press brakes?

MR. ROBINSON: Objection to the form. You can answer all of the time. I apologize for interrupting.

Q. Let me ask the question again. Would you agree, sir, that the standards that you would apply to power presses, punch presses, would not be the same standards that you would apply to press brakes?

MR. ROBINSON: Same objection.

A. Under most circumstances that is true.

Q. What circumstances would you mingle the standards?

A. There are some instances where press brakes are used to do power-press type of work. They have modifications made to them so they can accept power press-type dies, which are entirely different than press brake dies, and in those circumstances, the actual forming of material and point of operation safeguarding requirements are most often better applied if B 11.1 is used for the point of operation safeguarding as opposed to B 11.3.

MR. ROBINSON: That's B 11.1 and B 11.3 for the court reporter's sake.

Q. When you analyzed Ms. Lindquist's injury, am I correct, you did not mingle the standards as you applied them to this accident?

A. Correct.

Q. You used B 11.3?

A. Correct.

Q. And B 11.3 is because you were evaluating the press brake operating and performing in this capacity as a press brake, correct?

A. Yes.

Q. And it was not operating in the

capacity of a punch press?

A. That is correct.

Q. It's my -- Strike that.

During your 29 plus years with Cincinnati, Incorporated, did you have the occasion to examine what other press brake manufacturers were doing as it relates to utilization of foot controls?

A. I would not use the term "examine." "Observe" would be a better word.

Q. During that 29-year period that you were employed by Cincinnati, Incorporated, who were Cincinnati, Incorporated's major competitors from the US market in the sense of US manufacturers of press brakes?

A. The major US competitors at the time that I was working was Pacific Press & Shear, Chicago Press Brake Company, Verson, V E R S O N, Niagra Press & Shear or Press Company, Wysong, W Y S O N G, & Miles, M I L E S, Company. That's all that come to mind at the present time.

Q. Do you know if any of the manufacturers that were competitors of Chicago, Incorporated during the period of time that you

were employed by Chicago are still in business?

A. I wasn't employed by Chicago.

Q. I'm sorry, I'm not trying to mix that, I'm sorry. Strike that.

Do you know if any of the companies that were competitors of Cincinnati, Incorporated are still in business, manufacturing of press brakes?

A. The only one I know for sure is Pacific.

Q. They're still in business?

A. I believe so.

Q. Was Heim a competitor of Cincinnati?

A. Yes, they were.

Q. Do you know the number of press brakes that Cincinnati would have sold on an annual basis on an average during the period of your employment with them?

MR. ROBINSON: I'll object to the form of the question.

A. I would estimate somewhere in the neighborhood of 100 to 125 annually.

Q. Did Cincinnati, Incorporated have a research department that analyzed safety

mechanisms to be incorporated onto the press brakes?

A. They had a research and development department; part of their function was to perform the function that you just described, yes.

Q. Do you know whether Cincinnati, Incorporated ever studied foot controls as they relate to incorporation of use on the press brake?

A. I guess I need you to explain or define what "study" means.

Q. Did they ever do an analysis as to what type of foot control to place on the Cincinnati press brake?

A. I do not know.

Q. Are you aware of any analysis done by any manufacturer as to what type of foot control should be placed on a press brake?

A. No.

Q. Are you aware of any analysis done by any organization whatsoever that has studied the type of foot control to be placed on a press brake?

A. No.

Q. Am I correct that the ANSI

committee, the committee that formulated the standard that was published by ANSI, did not study the type of foot control that should be placed on a press brake?

MR. ROBINSON: Objection to the form.

A. Which committee are you referring to?

Q. Well, were you a member of the B 11.3 Committee?

A. I am a member of the B 11.3 Committee.

Q. Okay. What committee is it that formulated the B 11.3 standard?

A. The Subcommittee for Power Press Brake Safety.

Q. Okay. So the Subcommittee for Power Press Brake Safety, you are a member of that committee?

A. Yes.

Q. Did that committee study and identify the type of foot control that should be placed on a press brake?

A. Not in the way you're asking the

question, so I'd say no.

Q. Okay. Well, there's a little bit of hesitation in your answer, and would you explain to me what you're thinking of that gives rise to that hesitation?

MR. ROBINSON: Objection to the form.

A. The writing committee as it develops or revises a standard reflects on the types of controls that are currently in use in industry at the time of the revision process or the development process, if you go back to 1971 and '72 when the B 11.3 standard was originally drafted, and essentially writes the standard or writes the language of the standard based upon the practice -- the custom and practice of the industry at the present time.

Q. So what the standard does, is adopt the practice and custom that's in use at the time as the foot control that would be utilized with the press brake?

A. I think "adopts" is an improper word. It evaluates. It's not uncommon for a committee to look at what's going on in the

industry and write language that prohibits a particular type of practice or a particular type of device, if it is justified in the view of the committee.

Q. Okay. Were you a member of the B 11.3 Committee in 1971 and '72?

A. No.

Q. When is the first time you gained membership to the committee for the B 11.3 standard?

A. I believe it would have been about 2000, 1999 maybe.

Q. From 1971 to '72 to 2000, are you aware of any research done by the committee, the B 11.3 Committee, that analyzed riding the pedal as a problem in conjunction with foot controls?

A. No, I'm not.

Q. From the time of your admission to the committee in 2000 to the present, are you aware of any study or any analysis done by the committee that evaluates the hazard of riding the pedal in conjunction with use of foot controls?

A. No, I cannot recall the subject coming up at any committee meeting that I

attended.

Q. Would I be correct in saying that, with regard to the committee's analysis and what they have analyzed and what they haven't analyzed from 1971 to '72 to the year 2000, you have no information as to what the committee has analyzed?

A. That is correct.

Q. You have no knowledge as to what types of tests they may or may not have performed as it relates to foot control usage with press brakes?

A. Correct.

Q. And you're not aware of any safety evaluation that's been done by the committee to determine whether or not a gated foot control is safer than an ungated foot control in conjunction with usage of a press brake?

A. Correct.

Q. Are you aware of any research done by any entity that has analyzed the safety aspects of a gated foot control used in conjunction with a press brake?

A. No.

Q. Am I correct, sir, that a gated foot

control used in conjunction with a press brake is permitted by the B 11.3 standard?

MR. ROBINSON: Objection to the form.

A. Say that again, please.

Q. Am I correct, sir, that the B 11.3 standard permits a gated foot control to be used in conjunction with a press brake?

MR. ROBINSON: Same objection.

A. The B 11.3 standard is silent on the issue, and if you want to interpret that as permission, go right ahead, but it doesn't say one way or the other anything about a gated foot switch.

Q. Would a -- You're an expert on the B 11.3 standard; am I correct?

A. I'm a member of the committee of the B 11.3.

Q. Are you here to testify as an expert with regard to the B 11.3 standard?

A. No. I think I've been retained in this case to be an expert as it applies to press brakes.

Q. Okay. But you've applied the B 11.3

standard, correct?

A. Yes, I have.

Q. And in your application of the B 11.3 standard, you understand how to interpret the standard; am I correct?

A. Yes.

Q. And you would understand what is permitted and what is not permitted; am I correct?

A. Yes.

Q. Would the gated foot control be permitted under the B 11.3 standard for usage on a press brake?

MR. ROBINSON: Objection to the form, also asked and answered.

A. The previous answer stands. The standard is silent on it, so industry is allowed to interpret that however they wish. If somebody uses a gate or doesn't use a gate, they're not going to be in violation of the B 11.3 standard.

Q. If it was prohibited, the standard would indicate so, correct?

A. Yes.

MR. ROBINSON: Objection to the form of that question. I don't understand it.

Q. You understand the question; don't you?

MR. ROBINSON: That has nothing -- We went through this before. Anytime I raise an objection, it doesn't mean that the witness doesn't understand it or that the witness has a problem with it, it's from me from a legal point of view having problems with it.

MR. HARTMAN: I understand.

MR. ROBINSON: I know.

MR. HARTMAN: I understand your legal thing.

MR. ROBINSON: You have a habit of asking the witness if he understands the question after my objection, and I don't want to be, as we talked about before, misleading to you, and that's not what I'm saying at all.

MR. HARTMAN: I understand that and sometimes it might be, and I'm just trying to make sure that this witness understands the question.

MR. ROBINSON: I understand.

BY MR. HARTMAN:

Q. You understood that question?

A. Repeat it just since there's an

issue over it.

(The record was read back by the court reporter.)

BY MR. HARTMAN:

A. Yes.

Q. Does the B 11.3 standard prescribe issues as to -- Strike that.

Does the B 11.3 standard prescribe what features a foot control should have if it's going to be incorporated on a press brake?

A. It provides general requirements for foot controls.

Q. Okay. What are the general requirements for foot controls that are to be utilized on press brakes?

MR. ROBINSON: Objection to the form.

A. Paraphrasing the language that's in the standard, it essentially requires foot controls that are protected against actuation from falling objects or inadvertent actuation from stepping upon it or stepping on the foot switch or --

MR. ROBINSON: I didn't hear the last part.

A. -- foot control, inadvertent operation from stepping on the foot control.

Q. Would a covered foot control meet those requirements?

A. Yes.

Q. Is the covered foot control permitted by the ANSI standard, the 11.3, for use in conjunction with press brakes?

MR. ROBINSON: Objection to the form.

A. The covered foot control is one type of meeting the requirements of the standard.

Q. So, sir, would you agree that, if you had a covered foot control with a gate, that would be one type of meeting the requirements of the standard?

MR. ROBINSON: Objection to the form.

A. Yes.

Q. So a foot control that is covered and has a gate would be one of the methods of meeting the requirements of the standard for incorporation of a foot control on a press brake?

MR. ROBINSON: Objection to the

form.

A. Yes. It would be the same as just a covered foot pedal, foot switch.

Q. Would a covered foot switch with an anti-trip latch be one method of meeting the requirements of the standard for foot control usage in conjunction with press brakes?

A. Yes, with or without the toe release, the latch.

Q. So the ANSI standard is satisfied by a covered pedal, correct?

A. As soon as you cover the pedal, the standard is satisfied. If you go beyond that, you've covered the pedal and the standard is satisfied.

Q. So if you go beyond it, the standard is still satisfied, correct?

A. Yes.

Q. Is the ANSI standard a value system that you adhere to?

MR. ROBINSON: Objection to the form.

A. Me, personally?

Q. Yes.

A. A value system? I would answer that as that I recognize the ANSI B 11.3 standard as the only authoritative document in industry relative to the safety of press brakes.

Q. Would your testimony -- In your analysis with regard to Tina Lindquist, would it be a fair statement to say that, if the press brake meets the B 11.3 standards, it's safe, and if it doesn't satisfy the B 11.3 standards, it's unsafe?

MR. ROBINSON: Objection to the form.

A. With regard to Tina Lindquist --

Q. Yes.

A. -- and the press brake that she was operating, I would say yes.

Q. Other than meeting the standard or not meeting the standard and making your determination with regard to this case as to whether or not the press brake is safe, is there anything else that you would utilize as the means to make a determination as to whether or not the Heim press brake was safe?

A. Within the context of this case, I

think the B 11.3 standard provides the needed guidance to make that machine safe for Tina Lindquist on the day of her occurrence.

Q. So your opinion today as it relates to the press brake that was involved with Ms. Lindquist is, your analysis begins and ends with regard to the safety issues with B 11.3?

MR. ROBINSON: Objection to the form.

A. Yes.

Q. Are you aware of any manufacturer at anytime in your 29 plus years with Cincinnati, Incorporated that provided a gated foot control with their press brake?

MR. ROBINSON: Objection to the form.

A. Yes, at various times over the years.

Q. Would you identify what manufacturers you're aware of that provided gated foot controls with their press brakes?

MR. ROBINSON: Object. You mean at anytime?

MR. HARTMAN: During his 29 years.

MR. ROBINSON: Okay. Objection to the form.

BY MR. HARTMAN:

A. I believe Pacific provided a gated foot switch later on. Cincinnati, Incorporated provided gated foot switches. Chicago provided gated foot switches. Amada provided or provides a gated-type foot switch; that's A M A D A. I believe LBD, just the letters L B D, provides a gated-type foot switch; and possibly Trumpf, T R U M P F, provides a gated-type foot switch.

Q. Are you aware of any of the manufacturers of press brakes that you've just named that provided gated foot controls with their press brakes having done so in the period of 1971 to 1982?

MR. ROBINSON: Objection to the form.

A. '71 to '82 would be Cincinnati, Incorporated, it would be Chicago, it would be -- That's all I can think of. I know there was another one out there, I can remember the foot switch, but I can't remember the press brake.

Q. Are you aware of any of the

manufacturers of press brakes that you just enumerated that included gated foot controls with their press brakes still doing so, doing so today?

MR. ROBINSON: Objection to the form.

A. Well, the only two that are left are Pacific and Cincinnati, and both of them do, I believe.

Q. Okay. Are you aware of a press brake manufacturer that offers a gated foot control as standard equipment with their press brakes?

MR. ROBINSON: Objection to the form.

A. I don't know about Pacific, whether it's standard or not. I believe on some Cincinnati machines it's standard.

Q. Do you know why on some Cincinnati machines it would be standard and others it would not be?

A. No.

Q. Have you ever had discussions with the person responsible at Cincinnati as to why they included gated foot controls with their press

brakes?

A. It was a corporate decision made early on to provide that type of foot switch.

Q. Do you know why that decision was made?

A. Yes.

Q. Would you tell us?

A. It was anticipated that it would be a requirement in the B 11.3 standard, and the design was changed to accommodate that anticipated change -- or requirement, I should say, but that requirement never did get into the standard.

Q. But Cincinnati continued to use the gated foot control; am I correct?

A. Yes.

Q. Are you aware of any increase in accidents to the operator of Cincinnati press brakes with the incorporation of the gated foot control?

A. No.

Q. Are you aware of any decrease in the accidents to operators of Cincinnati press brakes with the incorporation of the gated foot control?

A. No.

Q. Did you agree with Cincinnati, Incorporated's decision to include a standard equipment on their press brakes a gated foot control?

MR. ROBINSON: Objection to the form.

A. I didn't have that opportunity.

Q. Okay. Do you agree with Cincinnati, Incorporated's decision today to include gated foot controls as standard equipment on some of their press brakes?

A. Yes.

Q. You agree with that decision?

A. Yes.

Q. And am I correct that you were a product liability litigation manager for Cincinnati, Incorporated?

A. No.

Q. In your curriculum vitae, it indicates that your task from February -- I'm sorry, from 1982 to September 2001 involved as one of your functions provide management on product liability litigation.

A. That was one of my responsibilities,

one of my functions, but I was not the manager.

Q. Okay. What does providing management on product liability litigation mean?

A. If Cincinnati, Incorporated were to receive a lawsuit from an individual such as yourself, I would take that lawsuit and initiate the processing of that lawsuit, hire attorneys in the local area or consult with others to hire local attorneys, arrange for machine inspections and other types of things that are done at the beginning of litigation, and essentially work closely with the selected law firm and selected lawyer in managing the overall defense of Cincinnati, Incorporated.

Q. During your 29 plus years with Cincinnati, Incorporated, are you aware of anyone that was injured utilizing a Cincinnati, Incorporated press brake where they were injured at the point of operation because of inadvertent activation of the foot control?

MR. ROBINSON: Would you read that question back? I'm sorry.

MR. HARTMAN: Yeah, that's fine.

(The record was read back by the court reporter.)

MR. ROBINSON: Objection to the form.

BY MR. HARTMAN:

A. Yes.

Q. How many people were injured that you're aware of?

A. I need to qualify the answer because there are numerous allegations of such a happening, but the reality of cases that the evidence actually showed inadvertent actuation was probably less than five that I can remember that I was involved in.

Q. Five out of how many cases were you involved in where it was alleged?

A. Maybe 30, 35, maybe 40 at the most.

Q. And in any of those 30 to 35 cases that you were involved in where it was alleged that the injury occurred because of inadvertent activation of the foot control, were any -- did any of those situations involve a gated foot control?

A. Oh, yes.

Q. How many?

A. I would estimate based upon the

population of the machines probably half of them.

Q. How would the population of the machines give you rise to an estimate that half of the cases involved foot controls that were gated?

A. Because of the population of machines that had been manufactured by Cincinnati, Incorporated and were out in the field using gated foot controls or using foot-switch type foot controls, half of them were from an era of gated foot controls and half of them were prior to that time.

Q. Okay. When did the era of gated foot controls begin at Cincinnati, Incorporated?

A. 1973.

Q. Did the gated foot controls at Cincinnati, Incorporated include an anti-trip latch?

A. No.

Q. Okay. Have they ever included an anti-trip latch?

A. No.

Q. Do you believe the inclusion of an anti-trip latch on the gated foot control utilized by Cincinnati would add to the safety of the gated

foot control?

MR. ROBINSON: Objection to the form.

A. No, if I understand your question right, but you'd better restate that because I think I lost it.

Q. Okay. Do you think the anti-trip latch would provide additional safety to the gated foot control utilized by Cincinnati on its press brakes?

A. No.

MR. ROBINSON: Objection to the form.

Q. You say no; is that correct?

A. That's correct.

Q. Why is that?

A. Because I believe that the addition of the toe release -- I call it a toe release.

Q. Okay.

A. -- to the flap further encourages the riding of the foot control or foot switch-type control.

Q. Do you have any data to support that opinion?

A. Just my 29 years of seeing it in the field.

Q. Well, I'm going to -- But do you have any research data, other than your 29 years being in the field?

MR. ROBINSON: Objection to the form.

A. That those types of features, the gate and the toe release or a combination of both, encourage riding?

Q. Yes.

A. Just the Triodyne Safety Brief.

Q. And what Triodyne Safety Brief are you discussing?

A. I make reference of it in my report. I'm not sure if it was in the 1994 or 1997 brief.

Q. With regard to the Triodyne Safety Briefs that are set in your report, do you agree that those articles are authoritative on the subject matter that they discuss?

A. No.

Q. You do not?

MR. ROBINSON: I'll object to the form of the question. I apologize for

interrupting, sir.

Q. You do not hold them to be authoritative?

A. Correct.

Q. How is it, then, that you rely upon them, if you don't deem them to be authoritative?

A. I don't rely upon them.

Q. You're not relying upon Triodyne Safety Briefs to formulate any opinions in this matter?

A. I'm using them as a basis for some comments and some rebuttal to Mr. Barnett's report. But my report when it references the Triodyne Safety Briefs is just quoting out of them and trying to point out areas where Mr. Barnett's testimony is flawed with his own documentation.

MR. ROBINSON: I didn't hear the last part, I'm sorry.

THE WITNESS: With his own documentation.

MR. ROBINSON: Thank you, sir.

BY MR. HARTMAN:

Q. So am I correct that the opinions you're giving in this case do not rely on the

Triodyne Safety Briefs cited in your report as it relates to the safety of the foot control in use with the Heim press brake involved in this case?

A. No, that really is not necessarily or essentially true, because I do, I do quote a particular paragraph out of one of the safety briefs in my report, so I guess I do have to concede that I do rely upon those briefs, even though I don't believe that they're authoritative. They are published documents.

Q. Would you typically rely upon published documents that you don't rely -- deem to be authoritative in formulating opinions?

MR. ROBINSON: Objection to the form.

A. Yes. I don't have any problem with doing that. Everybody does that. There are very few documents that are out there that have gone through peer review, so we have only limited access to peer-reviewed type documents. But there's been an awful lot published that's good, good material that we can learn from, material that's published in the National Safety Council that I read and rely upon quite frequently. But